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10/805,410	03/22/2004	Akihito Okura	250743US90	9849
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PHUNG, LUAT	
			ART UNIT 2416	PAPER NUMBER
			NOTIFICATION DATE 05/29/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/805,410

**Applicant(s)**

OKURA ET AL.

**Examiner**

LUAT PHUNG

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 1-8 are pending and rejected.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 6 is rejected under U.S.C. 103(a) as being unpatentable over Winther et al (US Pub. 2002/0141382) in view of Benayoun et al (US 6,950,429).

**Regarding claim 6**, Winther discloses a router in an IP network (para. 58), comprising:

a control and relay unit configured to control and route at said router in accordance with first bits for implementing bandwidth control at said router stored in a first area assigned within an IP-header field of an IP packet (**para. 58-62; router manages bandwidth allocation for the transmission of IP data packet by setting type of service (TOS) octet of IP header, including precedence field defining three priority levels for businesses with significant data requirements (e.g., T3 or 44Mbps), medium- and small-sized businesses (e.g., 1Mbps) and home-based customers (lowest transmission requirement), i.e., precedence being used for bandwidth control**), and second bits stored in a second area also assigned within said IP-header field of the IP packet (**para. 58, 59; TOS field in TOS octet of IP header**), wherein said first bits and said second bits do not interfere with each other within said IP-header field of the IP packet (**Fig. 6, elements PRECEDENCE 138 and TOS 140 in TOS octet 134 of IP header 154; para. 57**).

Winther expressly discloses second bits as recited above, and a router accepting data packets and routing them to a LAN or control node (**para. 47**) but not *second bits that indicate a path for routing the IP packet to a destination router at said router*. However, it is well known to one of ordinary skill in the art at the time of the invention that TOS field is used for routing packets in an IP network. For example, RFC 1349 (Type of Service in the Internet Protocol Suite), sec. 7 (Use of the TOS Field in Routing), specifically sec. 7.2 recites "A router in the Internet should be able to consider the value of the TOS field when choosing an appropriate path over which to forward an IP packet." Furthermore Benayoun from the same or similar fields of endeavor discloses a service type field 28 in the IP header (**Fig. 3**), the field including precedence bits and TOS bits (**col. 3, lines 35+**), the TOS value being used to select an appropriate routing table identifying the route to be used, specifically selecting an output queue for transmitting the frame over the network, e.g., voice frame to the first intermediate node and data frame to the second intermediate node (**col. 4, lines 24+**); i.e., TOS value being used to select a path for routing. In Benayoun, the "all zeros" TOS defines the default route. (**col. 4, lines 14+**) Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement TOS value to select a route as suggested by Benayoun in the network using precedence bits and TOS bits of Winther. The motivation for doing so would have been to determine an optimal route for IP packet transmission.

7. Claims 1, 3-5, 7 and 8 are rejected under U.S.C. 103(a) as being unpatentable over Winther et al in view of Benayoun et al, and further in view of Beshai et al (US Pub. 2002/0131363).

**Regarding claims 1 and 5**, Winther discloses all of the subject matter as previously recited in the rejection of claim 6 except a reporting unit configured to report to the routers the first bits and the second bits stored by the storing unit. Beshai from the same or similar fields of endeavor discloses a QoS controller comprising a reporting unit (**Fig. 1, element 26**) configured to report to the routers (**Fig. 1; elements 22**) traffic data and state information (**Fig. 1, lines from elements 22 to 26; para. 13, 15**). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the system being able to store router-control and routing bits of Winther and Benayoun with the reporting capability of Beshai by having the system reporting these types of bits to the routers in the network. The motivation for such a combination would have been to refine the routing features across the network.

**Regarding claim 3**, the combination of Winther, Benayoun and Beshai discloses substantially all of the subject matter as previously recited in this office action. Winther in view of Benayoun further discloses further comprising a database unit (**Fig. 5, element 114**), wherein the database unit represents a first bit sequence as a router-control class for controlling the routers (**para. 59-62; precedence field being used for bandwidth allocation of the router**), and a second bit sequence as a routing class for routing at the routers (**para. 64; TOS field being used for routing**), and stores, in accordance with a type of the IP packet, a relationship between the router-control class and the routing class. (**para. 58-59, 65; router managing bandwidth allocation and transmission prioritization by setting or altering the type of service octet which includes the precedence and TOS fields; varying levels of service, e.g., high priority, high speed, low priority, and low speed, can be set through setting of precedence field and TOS field; i.e., there exists a relationship between the first bits and the second bits to accommodate the different levels of service**).

Winther in view of Benayoun discloses the relationship between the router-control class and the routing class as recited above, and the relationship stored at the database unit (**Fig. 5, single board computer 114 containing ROM and RAM as per para. 53**), but Winther does not explicitly disclose the reporting unit reports to the routers the relationship. Beshai from the same or similar fields of endeavor discloses the reporting unit reports to the routers the traffic intensity and network state information to compute network routing sets and maintain network topology (**para. 16-19; para. 26, lines 1-5**). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the system being able to manage router-control and routing bits of Winther and Benayoun with the reporting capability of Beshai by having the system reporting updates related to these types of bits to the routers in the network. The motivation for such a combination would have been to refine the routing features across the network.

**Regarding claim 4**, the combination of Winther, Benayoun and Beshai discloses substantially all of the subject matter as previously recited in this office action. Winther in view of Benayoun and Beshai further discloses a corresponding-relationship updating unit configured to change the relationship stored at the database unit, between the router-control class and the routing class, based on the monitored traffic condition. (**para. 65**)

However Winther does not explicitly disclose:

a traffic-monitoring unit configured to monitor traffic conditions at the routers;



wherein the reporting unit reports to the routers the relationship changed by the corresponding-relationship updating unit.

Beshai from the same or similar fields of endeavor discloses:

a traffic-monitoring unit configured to monitor traffic conditions at the routers (**Fig. 1, element 26; line "Traffic Data" from element 22**);

wherein the reporting unit reports to the routers the relationship changed by the corresponding-relationship updating unit (**para. 16-19; para. 26, lines 1-5**).

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the system being able to manage router-control and routing bits of Winther and Benayoun with the reporting capability of Beshai by having the system monitoring traffic conditions and reporting updates related to these types of bits to the routers in the network. The motivation for such a combination would have been to refine the routing features across the network.

**Regarding claim 7**, the combination of Winther, Benayoun and Beshai discloses substantially all of the subject matter as previously recited in this office action. Winther in view of Benayoun and Beshai further discloses a router comprising a setting unit (**Fig. 5, element 114**) configured to set, based on a type of the IP packet, a router-control class to the first bits and a routing class to the second bits. (**para. 59-65**)

The combination of Winther and Benayoun does not explicitly disclose the router is arranged at a boundary of the IP network. Beshai from the same or similar fields of endeavor discloses a router arranged at a boundary of an IP network (**node in Fig. 1, element 22; para. 28, line 1**). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the router of Winther and Benayoun with the network of Beshai by placing the router at the edge of the network. The motivation for such a combination would have been to refine the routing features across the network.

**Regarding claim 8**, the combination of Winther, Benayoun and Beshai discloses substantially all of the subject matter as previously recited in this office action. The combination of Winther and Benayoun does not explicitly disclose further comprising:

a traffic-measuring unit configured to measure volume of traffic flowing into the router; and

a traffic-condition reporting unit, configured to report the measured volume as a traffic report to a QoS controller connected to the IP network, as recited in claim 8.

Beshai from the same or similar fields of endeavor discloses a router comprising: a traffic-measuring unit (**Fig. 1, element 28**) configured to measure volume of traffic flowing into the router; (**para. 51, lines 23-24; para. 87, lines 5-7**) and a traffic-condition reporting unit (**Fig. 1, element 28**), configured to report the measured volume as a traffic report to a QoS controller connected to the IP network. (**para. 51, lines 26-30**). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to combine the router using, router-control and routing bits of Winther and Benayoun with the router with traffic measuring and reporting of Beshai by adding the measurements capability on the router. The motivation for such a combination would have been to refine the routing features across the network.

8. Claims 3 and 4 are alternately rejected under U.S.C. 103(a) as being unpatentable over Winther et al in view of Benayoun et al and Beshai et al, and further in view of Koyanagi et al (US Pub. 2001/0013067).

**Regarding claim 3**, the combination of Winther, Benayoun and Beshai discloses all of the subject matter as previously recited in this office action, including a first bit sequence as a router-control class and a second bit sequence as a routing class, as recited in claim 3, the first bits for implementing bandwidth control and second bits indicating a path for routing, as recited in claim 1 on which claim 3 depends. However assuming *arguendo* that the combination does not disclose a relationship between the router-control class and the routing class. It is noted that the relationship between bandwidth and route selection for data transmission is well known in the art. For example, Koyanagi from the same or similar fields of endeavor discloses a path/class selection unit referring to the routing table to select the most appropriate path and service class to route IP packets, the service class being set based on transmission speed, i.e., bandwidth. **(Fig. 12B; para. 65)** That is, the routing table maintains a relationship between bandwidth and the route from which data is transmitted. Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement the routing table indicating relationship between bandwidth and route selection, corresponding to router-control class for bandwidth control and routing class for indicating a path for routing as claimed, of Koyanagi in the system of Winther, Benayoun and Beshai. The motivation for such a combination would have been to provide optimal routing for the requested service.

**Regarding claim 4**, the combination of Winther, Benayoun and Beshai in view of Koyanagi discloses all of the subject matter as previously recited in this office action.

9. Claim 2 is rejected under U.S.C. 103(a) as being unpatentable over Winther et al in view of Benayoun et al and Beshai et al, and further in view of Colley et al (US 6,650,644).

**Regarding claim 2**, the combination of Winther, Benayoun and Beshai discloses all of the subject matter except wherein the storing unit further comprises a storing-control unit configured to change a ratio of the first bit area to the second bit area so as to store the first bits into the first bit area and the second bits into the second bit area. Colley from the same or similar fields of endeavor discloses a storing-control unit (**Fig. 1, element 26**) configured to change the size of the fields in the TOS octet of the IP header (**col. 5, line 57 to col. 6, line 12**). Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to change the ratio of the first bit area and the second bit area by adjusting the fields in the TOS octet, as suggested by Colley, in particular, the precedence and TOS fields in the system of Winther, Benayoun and Beshai, in order to further refine QoS management control.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form 892).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUAT PHUNG whose telephone number is (571) 270-3126. The examiner can normally be reached on M-Th 7:30 AM - 5:00 PM, F 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. P./

Examiner, Art Unit 2416

/Ricky Ngo/

Supervisory Patent Examiner, Art Unit 2416